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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/153368

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 25, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on November 26, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether there is jurisdiction to hear the merits of Petitioner's case.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: No Appearance

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. On April 5, 2013, Petitioner filed an application for Social Security Disability Income (SSDI), alleging a disability caused by bad hands, Chronic Obstructive Pulmonary Disease (COPD), Asthma, Bronchitis, Arthritis, Diabetes, and a Learning Disability. (DDB File; Testimony of Petitioner)

3. On August 30, 2013, Petitioner submitted an application for Disability based Medicaid benefits, alleging a disability caused by COPD, diabetes, arthritis and SOB (shortness of breath). (Petitioner's testimony; DDB file)
4. On September 17, 2013, the Social Security Administration (SSA) denied Petitioner's application for SSDI. (DDB file; Petitioner's testimony)
5. On September 18, 2013, the Disability Determination Bureau (DDB) sent Petitioner a letter denying his application for disability-based Medicaid benefits. (DDB file; Petitioner's testimony)
6. On October 25, 2013, Petitioner filed a request for reconsideration of the DDB decision. (DDB file; Petitioner's testimony)
7. Petitioner also filed an appeal/request for reconsideration of the SSA decision and is still waiting to hear back from the SSA. (Testimony of Petitioner)
8. On October 31, 2013, the DDB again denied Petitioner's application for Medicaid benefits and forwarded Petitioner's file to the Division of Hearings and Appeals for review.

### DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or his condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
  - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

*42 CFR 435.541(c)(4)(emphasis added).*

Here, Petitioner applied for both Medicaid benefits and SSDI asserting the same disabling conditions. The SSA denied Petitioner's request for benefits within 12 months of his application for Medicaid.

Petitioner asserts that his condition has changed since he was denied Social Security Disability Benefits on September 17, 2013 and that he is getting worse, because he does not have access to the medications and supplies he needs to manage his COPD and diabetes. However, the Petitioner has applied to the SSA

for reconsideration and there is no indication in the record that the SSA has denied that request. Consequently, the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits.

### *Other Information*

Wisconsin Medicaid law will change significantly, effective January 1, 2013. On that date, a person is eligible for Wisconsin Medicaid if his income is at or below 100% of the federal poverty level; it will no longer be necessary that a recipient be under 19, elderly, blind, disabled, or a caretaker relative. The January 2014 version of Medicaid may be applied for online from November 18, 2013 onward at Wisconsin's website, <https://access.wisconsin.gov>.

In the meantime, here are some websites that list free or sliding scale clinics, where Petitioner might be able to get assistance:

<http://www.dhs.wisconsin.gov/forwardhealth/pdf/fqhc.pdf>

[http://www.needymeds.org/free\\_clinics.taf?\\_function=list&state=wi](http://www.needymeds.org/free_clinics.taf?_function=list&state=wi)

<http://www.diabetes.org/living-with-diabetes/treatment-and-care/health-insurance-options/prescription-assistance.html>

### **CONCLUSIONS OF LAW**

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits when there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 26th day of November, 2013

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 26, 2013.

Milwaukee Enrollment Services  
Disability Determination Bureau